

96TH CONGRESS
1ST SESSION

S. 1842

Entitled the “National Heritage Policy Act of 1979”.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28 (legislative day, JUNE 21), 1979

Mr. JACKSON (by request) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

Entitled the “National Heritage Policy Act of 1979”.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the “National Heritage Policy
4 Act of 1979”.

TITLE I

6 The Congress finds and declares that—

7 (a) it is in the public interest that natural and his-
8 toric resources significant to this Nation's heritage and
9 continuity be identified and protected by a coordinated
10 national approach to heritage conservation, so that a

1 vital legacy providing scientific, educational, recre-
2 ational, and inspirational benefits will be maintained
3 and enriched for present and future generations of
4 Americans;

5 (b) while existing Federal financial and technical
6 assistance programs, such as the Land and Water Con-
7 servation Fund and the Historic Preservation Fund, as
8 well as established natural and historic programs of
9 Federal land management agencies and State and local
10 governments, conserve particular aspects of our heri-
11 tage through the protection of parklands, historic
12 areas, wildlife habitat, recreation areas, and wilder-
13 ness, these efforts do not provide for the complete, ef-
14 fective, and efficient identification and protection of
15 heritage resources, many of which are being eliminated
16 or substantially altered by the activities of man;

17 (c) more orderly, accessible, and complete infor-
18 mation on the existence, location, condition, and status
19 of this Nation's natural and historic resources is needed
20 for informed and consistent heritage planning and
21 policy; and

22 (d) for the reasons stated above, it is necessary
23 and appropriate for the Federal Government to cooper-
24 ate with and provide direction for the efforts of States,
25 local governments, Indian tribes, private organizations,

1 and individuals to identify and protect those natural
2 and historic resources significant to this Nation's heri-
3 tage through a comprehensive national heritage policy.

4 TITLE II

5 NATIONAL HERITAGE PROGRAM

6 SEC. 201. The Secretary of the Interior (hereinafter re-
7 ferred to as the "Secretary") shall—

8 (a) establish a natural heritage program and an
9 historic preservation program;

10 (b) establish and administer a National Register of
11 Natural Areas (hereinafter referred to as the "Natural
12 Register") which shall include resources of national,
13 State, and local significance: *Provided*, That items of
14 national significance shall be designated as "National
15 Natural Landmarks": *And provided further*, That the
16 designation of "National Natural Landmark" shall only
17 apply to an area which clearly meets the standard for
18 national significance established pursuant to revised
19 criteria to be issued under section 201(e) of this Act;

20 (c) expand and administer the National Register of
21 Historic Places (hereinafter referred to as the "Historic
22 Register") established pursuant to section 101 of the
23 Act of October 15, 1966, as amended, (16 U.S.C.
24 470a) which shall include resources of national, State
25 and local significance: *Provided*, That items of national

1 significance shall be designated as "National Historic
2 Landmarks": *And provided further*, That the designa-
3 tion "National Historic Landmark" shall only apply to
4 an area which clearly meets the standard for national
5 significance established pursuant to the criteria to be
6 issued under section 201(e) of this Act.

7 (d) within one year of the effective date of this
8 Act, develop or expand regulations or guidelines, as
9 appropriate, for (1) documentation of significant infor-
10 mation concerning the resources, (2) eligibility criteria
11 for inclusion in the Natural or Historic Register, (3)
12 nominations to the Natural or Historic Register by the
13 State natural heritage officer of the State historic pres-
14 ervation officer established by subsections (f) and (g) of
15 this section, respectively: *Provided*, That recommenda-
16 tions of resources which may be eligible for listing on
17 the registers may be made to the State by any agency
18 or person, public or private, irrespective of the owner-
19 ship or protective status of the resource, (4) notification
20 by the State to the owners of natural areas and histor-
21 ic places that their property is being considered for
22 nomination to the Natural or Historic Register, (5) list-
23 ing resources in or removing them from the registers;
24 and (6) implementing the provisions of section 205 of
25 this Act;

(e) establish revised criteria for the designation of nationally significant areas and places on the Registers which are: (1) clearly capable of excluding areas and places from the nationally significant category, as well as including them; (2) clearly understandable to those participating in the selection process and those potentially affected by it; (3) capable of objective and consistent application; and (4) of high enough standards to limit those areas and places selected for national significance to a relatively small proportion of all areas and places eligible to be placed on the National Registers. Review procedures shall be established to ensure that the criteria are applied and that nationally significant areas and places have met the criteria;

(f) within eighteen months of the effective date of this Act, (1) develop, in consultation with the States, regulations or guidelines, as appropriate, for a State natural heritage program, and (2) request the Governor of each participating State to designate a State natural heritage officer. This officer may also be the State historic preservation officer. The elements of each State's natural heritage shall include, but not be limited to, discrete types of: (1) terrestrial communities, (2) aquatic communities, (3) geologic features, (4) landforms, and (5) habitats of native plant and animal species

1 which may be eliminated from the State without delib-
2 erate protection. It shall be the responsibility of each
3 State natural heritage officer to (i) classify, locate,
4 study, analyze, and plan for the protection of the ele-
5 ments of natural heritage located on non-Federal lands
6 within the State boundaries; (ii) accomplish these re-
7 sponsibilities on Federal and tribal lands with the coop-
8 eration of Federal agencies and Indian tribes, as appro-
9 priate; (iii) coordinate with ongoing Federal programs;
10 (iv) consolidate and maintain Federal and non-Federal
11 resource data as part of a statewide data system; and
12 (v) nominate areas containing the best examples of
13 these elements for inclusion in the Natural Register.
14 Upon the determination of the Secretary that it has es-
15 tablished a natural heritage program consistent with
16 the regulations or guidelines developed under this sub-
17 section, a State may use funds available to it under
18 section 6 of the Land and Water Conservation Fund
19 Act, as amended (16 U.S.C. 4601-8), for this purpose;
20 (g) Within eighteen months of the effective date of
21 this Act (1) develop, in consultation with the States,
22 regulations or guidelines, as appropriate, for a State
23 historic preservation program, and (2) request the Gov-
24 ernor of each participating State to designate a State
25 historic preservation officer. This officer may also be

1 the State natural heritage officer. It shall be the re-
2 sponsibility of the State historic preservation officer to
3 assist the Secretary in accomplishing the Secretary's
4 preservation responsibilities within the State, and to
5 assist Federal, State, and local agencies and Indian
6 tribes in accomplishing their preservation responsibil-
7 ities as established under this Act;

8 (h) ensure and direct United States participation
9 in the Convention Concerning the Protection of the
10 World Cultural and Natural Heritage, approved by the
11 Senate on October 26, 1973, and in other international
12 activities concerning the conservation and preservation
13 of natural areas and historic places, in cooperation with
14 the Secretary of State, the Smithsonian Institution and
15 the Council on Heritage Conservation, as established
16 by title III of this Act: *Provided*, That whenever pos-
17 sible, expenditures incurred in carrying out activities in
18 cooperation with other nations and international orga-
19 nizations shall be paid for in such excess currency of
20 the country or area where the expense is incurred as
21 may be available to the United States; and

22 (i) consult with the Council on Environmental
23 Quality to ensure that the administration of the nation-
24 al heritage program and any regulations or procedures
25 issued to implement the program are coordinated with

1 the Council's regulations for implementation of the Na-
2 tional Environmental Policy Act to the maximum
3 extent possible.

4 SEC. 202. The Secretary is authorized to—

5 (a) develop a process for the voluntary involve-
6 ment of the public in the conservation and preservation
7 of natural and historic heritage resources whereby the
8 States: (1) encourage public participation in assisting
9 with the identification and location of resources, (2)
10 take conservation and preservation priorities of local
11 governments into consideration in determining
12 statewide conservation and preservation priorities, and
13 (3) notify State agencies, local governments, and the
14 private sector of its priorities for protecting areas and
15 places of national, State, and local significance, and
16 provide them with technical information so that they
17 can take appropriate action to protect the resources;

18 (b) extend honorific Federal recognition of excep-
19 tional efforts by local governments and the private
20 sector in the identification and protection of significant
21 heritage resources;

22 (c) develop and provide technical and nontechnical
23 information and assistance, including documentation
24 standards for natural and historic resources which may
25 be eligible for inclusion in the Natural or Historic Reg-

1 ister, to other nations and international organizations,
2 the States, Indian tribes, other Federal agencies, pri-
3 vate conservation and preservation organizations, and
4 other interested parties on all aspects of natural and
5 historic heritage conservation; and

6 (d) study, in cooperation with other agencies and
7 private and public organizations, as appropriate, the
8 feasibility and necessity of establishing or developing
9 other protective measures at the Federal, State, and
10 local level for natural areas and historic places.

11 SEC. 203 Each Federal agency shall—

12 (a) with the advice of the Secretary and in coop-
13 eration with the State historic preservation officer for
14 the State involved, locate and nominate to the Historic
15 Register historic resources located on lands which it
16 owns or administers that appear to the head of such
17 Federal agency to be eligible for inclusion in the His-
18 toric Register;

19 (b) in cooperation with the Secretary, and subse-
20 quent to compliance with the National Environmental
21 Policy Act, section 206 of the Act of October 15,
22 1966, as amended (16 U.S.C. 470f), and with sections
23 204 and 205 of this Act, as appropriate, initiate meas-
24 ures to assure that where as a result of Federal action
25 or assistance, resources included in, or eligible for in-

1 clusion in the Natural Register or the Historic Register
2 are to be substantially altered or destroyed, timely
3 steps are taken to recover significant data, attributes
4 or values of the resources and to make or have made
5 records. A copy of such records is to be deposited in
6 the Library of Congress for future use and reference.
7 Agencies may call on the Secretary for advice and
8 technical assistance in the completion of the above rec-
9 ords. Notwithstanding section 7 of the Act of June 27,
10 1960, as amended (16 U.S.C. 469c), or any other pro-
11 visions of law to the contrary, compliance with the
12 data recovery requirements of that Act shall constitute
13 compliance with this subsection for the purposes of
14 data recovery at historic places. The costs of such re-
15 covery may be conveyed to Federal licensees, permit-
16 tees, or grantees;

17 (c) initiate measures and procedures to provide for
18 the maintenance, through preservation, rehabilitation,
19 or restoration, of federally owned historic resources of
20 national significance in accordance with standards pre-
21 scribed by the Secretary;

22 (d) cooperate with purchasers and transferees of
23 any federally owned or administered property included
24 in, or eligible for inclusion in, the Natural or Historic
25 Register in the development of plans for users of such

1 property that are compatible with conservation and
2 preservation objectives without imposing unreasonable
3 economic burdens on public or private interests;

4 (e) cooperate with the Secretary and the States in
5 collection, use, and exchange of compatible heritage re-
6 source information;

7 (f) consistent with its missions and mandates: (1)
8 cooperate with the Secretary and the States in efforts
9 to classify, locate, study, analyze, and plan for the pro-
10 tection of the elements of the States' natural heritage,
11 particularly those located on Federal lands; (2) inte-
12 grate information contained in the State natural heri-
13 tage program inventories into its ongoing planning
14 process; (3) in cooperation with the State natural heri-
15 tage officer for the State involved, nominate to the
16 Natural Register natural resources located on lands
17 which it owns or administers that appear to the head
18 of such Federal agency to be eligible for inclusion in
19 the Natural Register; and

20 (g) within twenty-four months of the effective date
21 of this Act, develop regulations or guidelines, as appro-
22 priate, to carry out its responsibilities under this Act.

23 SEC. 204. The head of any Federal agency having
24 direct or indirect jurisdiction over a proposed Federal or fed-
25 erally assisted undertaking in any State and the head of any

1 Federal agency having authority to license any undertaking,
2 shall, prior to the approval of the expenditure of any Federal
3 funds on the undertaking or prior to the issuance of any li-
4 cense, as the case may be, take into account the effect of the
5 undertaking on any area included in or eligible for inclusion
6 in the Natural Register. The head of any such agency shall
7 afford the Council on Heritage Conservation, as defined in
8 title III of this Act, a reasonable opportunity to comment
9 with regard to such undertaking.

10 SEC. 205. Prior to the approval of any Federal under-
11 taking which may adversely affect any natural or historic
12 landmark, the head of any Federal agency shall determine
13 that no prudent and feasible alternative to such undertaking
14 exists, shall, to the maximum extent possible, take such plan-
15 ning and actions as may be necessary to minimize harm to
16 such Landmark, and shall afford the Council on Heritage
17 Conservation a reasonable opportunity to comment on the
18 undertaking: *Provided*, That this section shall not take effect
19 until after the criteria to be prepared pursuant to section
20 201(e) are promulgated.

21 SEC. 206. Within six months of the effective date of this
22 Act, the Council on Heritage Conservation with the concur-
23 rence of the Secretary shall promulgate regulations or guide-
24 lines, as appropriate, for the exemption of Federal undertak-
25 ings from any or all of the requirements of this Act or the

1 Act of October 15, 1966, as amended (16 U.S.C. 470f),
2 when such exemptions will not substantially impair the pro-
3 tection of natural areas or historic places, taking into consid-
4 eration the magnitude of the exempted undertaking or pro-
5 gram and the likelihood of impairment of natural areas and
6 historic places.

7 SEC. 207. Section 6 of the Land and Water Conserva-
8 tion Fund Act of 1965, as amended (78 Stat. 900; 16 U.S.C.
9 4601-8), is further amended by—

10 (a) revising subsection (a) to read:

11 “(a) The Secretary of the Interior (hereinafter referred
12 to as “Secretary”) is authorized to provide financial assist-
13 ance to the States from moneys available for State purposes.
14 Payments may be made to the States by the Secretary as
15 hereafter provided, subject to such terms and conditions as he
16 considers appropriate and in the public interest to carry out
17 the purpose of this Act, for (1) planning, (2) acquisition of
18 lands, waters, or interests in land and waters, or (3) develop-
19 ment for outdoor recreation and the conservation of natural
20 areas: *Provided*, That such areas may be subject to uses or
21 use restrictions as are found by the Secretary to be consistent
22 with the maintenance of their natural qualities and condi-
23 tion.”.

1 (b) inserting before the colon in subsection (d)(2)
2 the following words: “, and appropriate development or
3 protection of natural areas”; and

4 (c) deleting in the first sentence of subsection (f)(3)
5 the words “public outdoor recreation uses” and substi-
6 tuting “public outdoor recreation or natural area con-
7 servation uses”, and deleting in the second sentence
8 the words “recreation properties” and substituting
9 “recreation or natural area properties, as appropri-
10 ate,”.

11 SEC. 208. Section 101(a)(1) of the Act of October 15,
12 1966, as amended (16 U.S.C. 470a), is hereby amended to
13 read:

14 “(a) to expand and maintain a national register of dis-
15 tricts, sites, buildings, structures, objects, networkers, cultur-
16 al landscapes, and neighborhoods significant in American his-
17 tory, architecture, archeology, or culture, hereinafter referred
18 to as the National Register, and to grant funds to States for
19 the purpose of preparing comprehensive statewide historic
20 surveys and plans, in accordance with criteria established by
21 the Secretary, for the preservation, acquisition, and develop-
22 ment of such properties.”.

23 SEC. 209. Section 108 of the Act of October 15, 1966,
24 as amended (16 U.S.C. 470h), is amended by deleting the

1 phrase “for fiscal year 1981” and inserting in its place the
 2 phrase “per year for fiscal years 1981, 1982, and 1983”.

3 TITLE III

4 COUNCIL ON HERITAGE CONSERVATION

5 SEC. 301. Title II of the Act of October 15, 1966, as
 6 amended (16 U.S.C. 470i), is further amended as follows:

7 (a) Amend section 201(a) as follows:

8 (1) delete the words “an Advisory Council on
 9 Historic Preservation” and substitute in lieu thereof “a
 10 Council on Heritage Conservation” and any reference
 11 in law to the Advisory Council on Historic Preserva-
 12 tion shall hereafter be considered a reference to the
 13 Council on Heritage Conservation; and

14 (2) delete from section 201(a) the word “twenty-
 15 nine” and substitute in lieu thereof “thirty-three”;

16 (3) delete sections 201(a)(9), (13), (17) and (18)
 17 and substitute in lieu thereof:

18 “(9) The Secretary of Labor;

19 “(13) The Secretary of Energy;

20 “(17) The Administrator of the Environmental
 21 Protection Agency;

22 “(18) The Director of the National Science Foun-
 23 dation;

24 “(19) The Chairman of the National Endowment
 25 for the Humanities;

1 “(20) The Chairman of the National Endowment
2 for the Arts;

3 “(21) Thirteen appointed by the President from
4 outside the Federal Government. In making these ap-
5 pointments the President shall give due consideration
6 to equal representation of persons with expertise in
7 natural area conservation and historic preservation,
8 and to the selection of officers of State and local gov-
9 ernments, Indian tribes, and individuals who are sig-
10 nificantly interested and experienced in the matters to
11 be considered by the Council.”.

12 (b) Amend section 201(b) by deleting “(17)” and substi-
13 tuting in lieu thereof “(20)”;

14 (c) Amend section 201 (c) to read as follows:

15 “(c) Each member of the Council appointed under para-
16 graph (21) of subsection (a) shall serve for a term of four
17 years from the expiration of his predecessor’s term; except
18 that the members first appointed under that paragraph shall
19 serve for terms of from one to four years, as designated by
20 the President at the time of appointment, in such manner as
21 to insure that the terms of not more than five of them will
22 expire in any one year.”.

23 (d) Amend section 201(d) to read as follows:

24 “(d) A vacancy in the Council shall not affect its power,
25 but shall be filled in the same manner as the original appoint-

1 ment (and for the balance of any unexpired terms): *Provided*,
2 That each member of the Advisory Council on Historic Pres-
3 ervation appointed by the President under former paragraph
4 (18) of the Act of October 15, 1966, as amended, in office on
5 the date of enactment of this Act, shall remain in office until
6 such time as the member's term expires or the President ap-
7 points a new member under paragraph (21) of subsection (a)
8 of this section.”.

9 (e) Amend section 201(e) to read as follows:

10 “(e) The Chairman of the Council shall be designated by
11 the President from among those members appointed under
12 paragraph (21) of subsection (a) of that paragraph. The Presi-
13 dent shall also designated a Vice Chairman who shall act in
14 place of the Chairman during the absence or disability of the
15 Chairman or when the office is vacant.”.

16 (f) Amend section 201(f) by deleting the word “fifteen”
17 and substituting in lieu thereof the word “seventeen”.

18 (g) Amend section 202(a)(1) by inserting prior to the
19 semicolon in the first clause, “and conservation of natural
20 areas” after the term “historic preservation” whenever it ap-
21 pears;

22 (h) Amend section 202(a) by adding at the end thereof
23 the following new subsections:

24 “(6) review Federal policies and programs affect-
25 ing historic places and natural areas to recommend

1 means to improve the effectiveness, coordination and
2 consistency of those policies and programs; and

3 “(7) inform and educate interested Federal agen-
4 cies, State and local governments, Indian tribes, other
5 nations, and international organizations and private
6 groups and individuals as to the Council’s authorized
7 activities.”;

8 (i) Amend section 204 by striking the term “(17)” in the
9 first sentence and inserting in lieu thereof “(19)” and striking
10 the term “(18)” in the second sentence and inserting in lieu
11 thereof the term “(20)”;

12 (j) Delete section 205(c);

13 (k) Amend section 205(d) by deleting the words “with-
14 out regard to” and inserting in lieu thereof the words “in
15 accordance with”.

16 (l) Amend section 205(g) by inserting after the word
17 “facilities,” in the second sentence the word “monies,”; and
18 adding the following phrase at the end of the last sentence:
19 “and the Executive Director in his administration of the
20 Council is authorized, in his discretion, to accept, hold, use,
21 expend and administer the same for the purposes of this
22 Act.”;

23 (m) Amend section 206(c) to read as follows:

24 “(c) For the purpose of this section, there is authorized
25 to be appropriated an amount equal to the assessment for

1 United States membership in the Centre for fiscal years 1979
 2 and 1980: *Provided*, That no appropriation is authorized and
 3 no payment shall be made to the Centre in excess of 25 per
 4 centum of the total annual assessment of such organization.”;

5 (n) Delete section 210;

6 (o) Redesignate section 211 as section 210;

7 (p) Redesignate section 212(a) as section 211 and
 8 amend by deleting the last sentence “There are authorized to
 9 be appropriated such sums as may be necessary to carry out
 10 such activities of the Council as may be authorized by the
 11 Congress.”; and

12 (q) Delete section 212(b).

13 SEC. 302. The Council is authorized to promulgate,
 14 within one hundred twenty days of the effective date of this
 15 Act, such rules and regulations as it deems necessary to im-
 16 plement its responsibilities under sections 204 and 205 of this
 17 Act.

18 TITLE IV

19 ADMINISTRATIVE PROVISIONS

20 SEC. 401. For the purposes of this Act—

21 (a) the term “agency” means “agency” as such
 22 term is defined in section 551 of title 5, United States
 23 Code;

24 (b) the term “State” means any State of the
 25 United States, the District of Columbia, the Common-

1 wealth of Puerto Rico, Guam, the Virgin Islands,
2 American Samoa, and the Northern Mariana Islands;

3 (c) the term "undertaking" means any Federal,
4 federally assisted, or federally licensed action, activity,
5 or program or the approval, sanction, assistance, or
6 support of any non-Federal action, activity, or pro-
7 gram. Undertakings include new and continuing pro-
8 jects and program activities that are: (1) directly un-
9 dertaken by Federal agencies; (2) supported in whole
10 or in part through Federal contracts and grants, or
11 other forms of direct and indirect funding assistance;
12 and (3) carried out pursuant to a Federal lease, permit,
13 license, certificate, approval, or other form of entitle-
14 ment or permission;

15 (d) the term "Indian tribe" means the governing
16 body of any Indian tribe, band, nation, or other group
17 which is recognized as an Indian tribe by the Secretary
18 of the Interior and for which the United States holds
19 land in trust or restricted status for that entity or its
20 members;

21 (e) the term "eligible for" the Natural or Historic
22 Registers as used in this Act and section 106 of the
23 Act of October 15, 1966, as amended, means meeting
24 the criteria established by the Secretary for listing in
25 the Natural or Historic Register.

1 SEC. 402. Each Federal agency is authorized to expend
2 funds appropriated for its authorized programs for the pur-
3 poses of this Act.

4 SEC. 403. The Secretary may accept donations and be-
5 quests of money and personal property for the purposes of
6 this Act and shall hold, use, and expend and administer the
7 same for such purpose.

8 SEC. 404. The head of each Federal agency, after con-
9 sultation with the Secretary of the Interior, shall withhold
10 from disclosure to the public, information which might reveal
11 the specific location of sites, objects, buildings, structures,
12 terrestrial communities, aquatic communities, geologic fea-
13 tures, or landforms which are eligible for or included in the
14 Natural Register or the Historic Register, whenever the head
15 of the agency or the Secretary of the Interior has a reason-
16 able basis for determining, and determines that the disclosure
17 of such information would (1) create a substantial risk of
18 harm, theft, or destruction to such sites, objects, buildings,
19 structures, flora, fauna, terrestrial communities, aquatic com-
20 munities, geologic features, or landforms, or (2) create a sub-
21 stantial risk of harm, theft, or destruction to the area or place
22 wherein such sites, objects, buildings, structures, flora, fauna,
23 terrestrial communities, aquatic communities, geologic fea-
24 tures, or landforms are located, such as to destroy any or all
25 of the features for which the area or place was determined

1 eligible for or included in the Natural Register or the Historic
2 Register.

3 SEC. 405. Nothing in this Act shall be construed to
4 modify or amend existing authorities which provide for a
5 greater degree of protection to natural areas and historic
6 places; the more restrictive conservation or preservation au-
7 thorities shall control.

8 SEC. 406. There are authorized to be appropriated such
9 sums as are necessary to implement the provisions of this
10 Act.

○